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Attorney for Alexie Active

ALEXIE ACTIVE,)	
)	
Plaintiff,)	
)	
v.)	
)	Case No. _____
UNITED STATES OF AMERICA,)	
)	
Defendant,)	
_____)	

COMPLAINT

Plaintiff, for his cause of action against the Defendant, complains and alleges as follows:

1. This lawsuit is brought pursuant to the Federal Tort Claims Act, 28 USC § 2671-2680. The Plaintiff has submitted a "Standard Claim Form 95" and more than six (6) months has passed, with no denial of the claim.
2. This Court has jurisdiction over the parties and the subject matter of this lawsuit, pursuant to 28 USC § 1346. Venue is proper pursuant to 28 USC § 1402.
3. At all times relevant hereto the Plaintiff was a resident of Togiak, Alaska.
4. At times relevant hereto, the United States of America, acting through the Department of Interior/Bureau of Indian affairs (hereinafter "BIA"), contracted with the Togiak Traditional Council, a.k.a. Traditional Council of Togiak (hereinafter "TCT") to construct federally funded housing in Togiak, Alaska.

5. At times relevant hereto, TCT was an Indian or tribal contractor, pursuant to the Indian Self-Determination Act.

6. The United States of America was responsible for obtaining or providing insurance coverage for TCT in relation to its work as a tribal contractor, including Workers' Compensation insurance coverage.

7. The United States is liable for the negligence of TCT as a tribal contractor.

8. On July 3, 2011, the Plaintiff was employed by TCT as a construction worker on the federally funded BIA housing construction project. While working within the course and scope of his employment, he was injured.

9. The defendant is liable for tort claims against TCT in the same manner and to the same extent as a private individual would be under like circumstances.

10. At the time of plaintiff's injury, TCT did not have Workers' Compensation insurance coverage because it had failed to pay its Workers' Compensation insurance premiums.

11. As an employer in the State of Alaska, TCT was legally bound by the Workers' Compensation laws of the State of Alaska. Failure to maintain Workers' Compensation insurance coverage constitutes a waiver of the employer's immunity from suit by an employee injured on-the-job.

12. Plaintiff brought a personal injury lawsuit against TCT in the Superior Court of the State of Alaska in Dillingham, Alaska alleging that TCT negligently caused his injuries and damages.

13. TCT successfully asserted the defense of sovereign immunity in the state court lawsuit and that action was dismissed, because the Superior Court concluded it lacked jurisdiction over TCT.

14. TCT, as any other employer in Alaska, was required by law to have Workers' Compensation insurance to protect all of its employees in the event of an on-the-job injury. Failure of an employer in Alaska to obtain and maintain Workers' Compensation insurance coverage for the protection of its employees is a serious violation of law as set forth in AS 23.30.075 through AS 23.30.080 and exposes the employer to liability for its negligence.

15. On or about July 3, 2011, Plaintiff, while acting within the course and scope of his employment with TCT, fell from the roof of a building he was working on for TCT and suffered serious injuries. The Plaintiff's injuries include, but are not limited to, a concussion, a closed head injury, a broken shoulder blade, broken ribs, a collapsed lung, and a broken wrist.

16. As a result of the injury, Plaintiff has incurred and suffered the following damages: (a) medical expenses, past and future, including the cost of a med-evac from Togiak to Dillingham and from Dillingham to Anchorage; (b) loss of earnings and loss of future earning ability; (c) physical and emotional pain and suffering; (d) physical impairment and disability; and (e) other damages as will be proven at the time of trial.

17. The Plaintiff's injuries were a direct and proximate result of the Defendant's negligence. The Defendant's negligence includes, but is not limited to: failure of Plaintiff's co-workers to lock an extension ladder so it would not collapse when he applied his weight to it; failure of Plaintiff's co-workers to assist the Plaintiff in getting down from the roof in a safe manner; failure to provide proper training and supervision to Plaintiff and to all its employees at the construction site; failure to provide Plaintiff with proper safety equipment; failure to establish and enforce work procedures for ascending and descending ladders; failure to exclude unqualified non-employees from the job site; and failure to comply with health and safety laws and regulations directly applicable to the work being performed by the Plaintiff and his coworkers.

18. Pursuant to Alaska law, the Plaintiff is entitled to a presumption that the employer was negligent and that this negligence caused his injuries.

19. Plaintiff is entitled to an award of economic and non-economic damages, which will fully compensate him for the injuries and damages he has suffered. The Plaintiff's damages are not limited to Workers' Compensation benefits.

20. The defendant is not entitled to assert defenses typically available to a defendant in a personal injury action because it has violated its duties to obtain and maintain Workers' Compensation insurance on its employees. *See* AS 23.30.080.

25. Plaintiff is entitled to a judgment against the Defendant for his injuries and damages in excess of \$100,000.00, as set forth in his Claim Form 95 and as proven at the time of trial.

WHEREFORE, Plaintiff prays for judgment against the Defendant for in excess of \$100,000.00, the exact amount to be proven at the time of trial, for his costs and attorney fees and such other and further relief as may be deemed just and proper.

DATED this 9th day of May, 2014.

/s/ ELLIOTT T. DENNIS
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